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VOLUME 4

1927

THE DENVER BAR ASSOCIATION

RECORD

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Leading Articles

INHERITANCE TAXES—THE PRESENT SITUATION IN COLORADO

By LEROY McWHINNEY, Esq., of the Denver Bar

REVALUATION OF PROPERTY IN DENVER FOR PURPOSES OF ASSESSMENT

By CLEM W. COLLINS, Esq., County Assessor of Denver

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Lot's Wife and 1927

LOTS of lawyers can learn a lot from the lesson of Lot's wife. You remember what happened to her when she looked back, and the same thing might happen to us, individually and collectively, if we looked back regretfully over 1926.

The mistakes we made, the good things we left undone, the misfortunes that beset us, including the defeat of Amendment No. 1, and other matters of regret—all these things, if we were inclined to ponder them, might form such an impressive array of negative reflections that we'd be almost ready to give up in disgust.

But the Denver Bar is an organization of builders, not mourners, and we're not going to play Lot's wife and worry uselessly over what has happened or failed to happen in the past. We are living in the present and striving to make the future better for the community and the state in which we live, no less than for ourselves, and that is the spirit which the "Record" finds in this forward-looking organization of ours.

Moreover, 1926 was full of accomplishments. There was the American Bar meeting, for example, held under the able administration of Judge Butler, which was an outstanding achievement that not only put The Denver Bar Association on the map as one of the nation's livest and most hospitable

lawyers' organizations but also put Denver on the map as one of the great cities of the United States; then, there was the splendid work done for Amendment No. 1, under the new administration of President Marsh; and, finally, there is the new spirit of close fellowship—the esprit de corps—which has caught hold of us in the past year or two and makes possible the accomplishment of whatever constructive tasks we may set our hands to in 1927.

We are starting out in the New Year with much unfinished important business; with many difficult tasks ahead; but with a record of accomplishment in the past of which we may well be proud; with an organization the like of which, in numbers and in enthusiasm, we have never known before; and with a spirit that will carry us far on the road to that ultimate legal millennium toward which we are always, if somewhat blindly, striving.

Let there be no Lot's Wife in the Denver Bar Association and hence no pillars of salt to impede our progress.

A Happy, Busy and Useful New Year to you all.

Our New Year's Resolution

WHEREAS, in Nineteen Twenty Six,
The voice of our profession,
In public life and politics,
Was heard and found expression;

NOW, THEREFORE, let us all resolve,
With "Service" as our leaven,
To make a mighty Bar evolve
In Nineteen Twenty Seven.

Inheritance Taxes—The Present Situation in Colorado

By LEROY MCWHINNEY
of the Denver Bar

THERE are many well informed people of divergent points of view who believe that the whole system of death duties should be abolished as economically unsound. In the State of Colorado there is a considerable party urging the repeal of our own inheritance tax, and the making of a covenant with the world, in the form of a constitutional amendment, that such a tax law will not be reenacted. The majority of this group are so aligned upon the theory that Colorado would gain a peculiar benefit by adding to its charm of climate a guarantee of freedom from death duties—that these advantages, sufficiently advertised, would bring to our State accumulations of capital and development of resources more than off-setting any direct loss of revenue which might result from repeal of the inheritance tax. In other words they would have us follow the experiment of which Florida's program is the most spectacular example.

However, so long as the "80% credit" clause of the 1926 Federal Estate Tax Act remains in force no such temptation can be dangled before foreign capitalists, because if we do not collect the tax the Federal Government will. Indeed, the 80% clause was written into the Federal statute solely for the purpose of preventing any successful emulation of Florida, and of penalizing that state for its enterprise in this direction.

The life of this provision is uncertain. Congressional opinion is divided, and the constitutionality of the scheme is already the subject of direct attack in the United States Supreme Court by the State of Florida. It would seem, however, that whatever merits adhere to the abolitionists' argument on general principles, their proposal must remain moot while the existing Federal legislation stands. It is necessary, moreover, to also take into consideration the undisputed fact that tax experts and economists throughout the country are in general agreement that death duties in some form constitutes a legitimate source of revenue, made specially attractive by the ease and economy of collection. While the present development of this form of taxation in America dates back only to the experiments of the State of New York in 1886, it has, nevertheless, been quite thoroughly tried out by the Federal Government and by practically every State in the Union.

The Importance of the Tax

We have, therefore, to deal with a form of revenue legislation which is well seasoned, perhaps generally accepted as sound, and the opposition to which has been for the moment checked by the attitude of Congress. If, therefore, we are at this time to examine the system critically, our attention should be directed primarily to the form and detail of the system rather than to the question of its existence. We may profitably consider whether we in Colorado have adopted the most satisfactory form of death duties; whether in its operation our system is fair and reasonable; whether our rates are equitable and such as to bring the greatest lasting benefits to our state.

First, then, what is the amount of the tax, and what is its relation to other revenue? The following table, for which I am indebted to Mr. George W. Loomis of the Denver Real Estate Exchange, sets forth the situation as prevailing under the now existing statute of 1921.

YEAR	Net Inheritance Tax Collected	Total State Tax By Mill Levy	Mill Levy	Percentage Inheritance Tax of General Tax
1921	473,127	6,890,445	4.35	6.86
1922	485,338	6,947,729	4.48	7.00
1923	678,577	6,080,798	3.93	11.16
1924	839,009	5,699,851	3.70	14.72
1925	887,488	5,700,710	3.70	15.57

The collection for the year 1926 will also approximate $900,000, and it is probable that in the near future the average annual revenue from this source will reach $1,000,000, or, a little less than one-sixth of the revenue raised by the state's mill levy for general purposes. In other words, if the inheritance tax were to be entirely abolished, the state's general levy would have to be increased by 60 cents per thousand dollars of assessed valuation. Applying these figures to the aggregate general taxes as paid by property owners in Denver we find that if the inheritance tax were to be wholly omitted, the levy in Denver would have to be increased from approximately $31 per thousand dollars of assessed valuation to $31.60 per thousand dollars, an advance of slightly less than 1/50th. For practical purposes we may, therefore, treat the inheritance taxes as equal to about 1/50th of the burden of our general taxes, an important, but minor, factor.

Second, what of the comparative level of the rates in Colorado and in other states? Three states (Alabama, Florida and Nevada) have no inheritance tax. Georgia has only a simple statute taking advantage of the "80% credit" clause in the Federal estate tax act. The other 44 impose death duties in some form. Mr. W. N. Trant of Haskins and Sells has recently prepared, for the Denver Chamber of Commerce, a table of such comparisons. It will be understood by those familiar with the subject that the possible combinations of factors (size of estate, number of beneficiaries and their degree of relationship, amount of exemptions, etc.) in succession taxes (as distinguished from estate taxes) are so numerous that a comprehensive comparison of succession tax statutes is wholly impracticable. Mr. Trant's calculations, intended as an illustration, were based upon estates ranging from $50,000 to $10,000,000 in value, all passing to the widow as the sole beneficiary. His table follows:

Amount of the Estate	Colo. tax under present statute with retroactive scale	Colo. tax under existing rates changed to progressive scale	Average of 43 American States	Federal Act 1926
$ 50,000.00	$ 600.00	$ 600.00	$ 610.12	
100,000.00	2,400.00	2,100.00	1,917.44	
200,000.00	9,000.00	6,600.00	5,457.44	$ 1,500.00
500,000.00	28,800.00	24,100.00	18,588.14	12,500.00
1,000,000.00	68,600.00	59,100.00	45,380.47	41,000.00
2,000,000.00	138,600.00	129,100.00	104,326.28	124,500.00
5,000,000.00	348,600.00	339,100.00	311,232.68	489,500.00
10,000,000.00	698,600.00	689,100.00	646,312.91	1,334,500.00

It will be seen that while the Colorado rates, as now applied approximate the American average in the lowest ($50,000) bracket, they are in all other brackets up to $5,000,000 substantially higher than the average of other American state, and in all brackets up to, and somewhat in excess of, $2,000,000 substantially higher than the Federal estate tax; also, that in estates approximating $100,000 the excess is fully 25%, in other brackets up to $1,000,000 fully 50%, and at $2,000,000 fully 30%.

It appears from these calculations that we could effect a downward revision of our rates without seriously affecting our general taxes, and that such revision could be carried to the extent of at least 30% (on estates valued at well upwards of $2,000,000) without bringing the level of our rates below the American average or below the amount required to take full advantage of the Federal credit. It is, therefore, not difficult to understand the point of view of those who now urge that it is unwise for Colorado to impose upon that capital which we invite to participate in the development of our resources an inheritance tax higher than the American average.

There are, of course, several methods by which the rates might be lowered; for example: by direct reduction; by change to the progressive block method of calculation (see Mr. Trant's third column); or, by a change from the succession tax form of statute which we now have to the more simple form known as the estate tax. These two latter alternatives will be discussed below in other connections.

Objectionable Features

There are, however, several other objections to our present statute which are more serious than the level of rates. These are frequently referred to as "nuisance features", and there is throughout the bar and associations of business and professional men a strong sentiment in favor of their elimination. Eight or nine such objections are most commonly considered as follows:

1. The retroactive progressive method of determining the rate, by which the rate imposed on the highest bracket is applied to the entire estate. This plan is used in no other state excepting Maine, where the maximum tax on near relatives is only 2%. It is inequitable and unscientific in that there is no logical reason why a difference of $1 in valuation should result in an additional tax of 1% on the whole estate. It is out of line with approved practice as exemplified in the succession taxes of 42 other states, the Federal estate tax and the income taxes. In practice it results in placing a premium on efforts of representatives of the estate or the government to bring about a fictitious appraisal.

2. Denial of exemption to life estates. So far as I am advised this characteristic appears in no other death duty statute in this country. The result is that if a husband leaves his wife an estate of $20,000 to dispose of as she pleases, she pays no tax, but if he safeguards her and the children by giving her a life estate with remainder over to their descendants (whether by legal or equitable means), the whole of the life estate is subject to tax. The value of the life estate depends on the expectancy of the widow. For example: If she is 56 years old her life estate is valued at approximately one-half the value of the property composing the same. The same principle, of course, applies to the portions of other members of the family. A recently retired inheritance tax commissioner advises me that there is more objection to this provision, particularly from lawyers outside of Denver, than to any other feature of the statute.

3. Repetition of the tax on the same property without an interval of exemption (by reason of successive deaths in the line of descent, devise or bequest). It is a common practice to extend immunity from taxation for a period of from two to five years to property upon which death duties have once been paid (for example: Federal statute, 5 years; Mississippi, 2 years; California, 5 years as to Class 1). Our statute grants no such immunity, and it is not unusual for an estate to be taxed two or three times before the administration of the first decedent's estate can be completed.

4. Mutiple taxation. This scheme of taxing such of the intangibles of non-resident decedents as are within the sovereign jurisdiction of the state is the outstanding evil which has brought down upon the whole death duties system torrents of wrath and criticism, and is largely responsible for the nation's wide demand for reform. Recently the Supreme Court of the United States has placed a decided check upon the avarice of the states in this direction (Rhode Island Hospital Trust Company vs. Doughton, 46 Sup. Ct. 256; Frick vs. Pennsylvania, 268 U. S. 473), and there has been a decided wave of reform legislation. Georgia, Rhode Island, Tennessee, Vermont and New Jersey have entirely exempted intangibles of non-residents; for practical purposes Nebraska, Delaware, Maryland, Louisiana, Wyoming (as to corporate securities), New Hampshire (as to certain corporate securities and as to bank balances), and other states are in the same class. Four jurisdictions have no inheritance tax, and New York, Massachusetts, Pennsylvania, Connecticut and New Mexico (as to corporate securities) grant such exemptions reciprocally. This reciprocal offer, however, has no application to Colorado estates, because Colorado does not grant similar privileges to the citizens of the last mentioned states; consequently, until we abolish the duties on non-residents' intangibles, either completely or reciprocally, the estates of our citizens must continue to pay tribute on the stocks and other intangibles controlled by New York, Massachusetts, Pennsylvania and Connecticut. Fortunately, the complete abolition of this extremely unpopular phase of the tax can be now accomplished in Colorado with practically no revenue disturbance. The day was when perhaps 10% of our total inheritance tax collections was derived from non-residents' intangibles—particularly the stock of the Wells-Fargo Express Company and the Denver and Rio Grande Western Railroad Company, the first of which is no longer in business and the latter reorganized as a Delaware corporation. Now, Mr. Eaton, Deputy Inheritance Tax Commissioner, informs me that the collections have dwindled to practically nothing—perhaps three or four per cent.

5. Tax on foreign charities. It seems to me that a strange relic of barbarism that many American states in adopting inheritance taxes should have placed the highest possible tax rate on gifts for religious, educational, or other charitable purposes if there was any possibility of the money being used outside of the taxing state. Modernly, there is a tendency to reform, but Colorado and some 18 other states still grant exemptions to charities only when the funds are to be used entirely within the state. If a resident of this state makes a testamentary gift to foreign missions, or to a church, college, or other institution, located outside of this state, or located in this state with a field of operations wider than our own boundaries, Colorado will first carve out an inheritance tax at the maximum rate. Six states, Connecticut, Iowa, Rhode Island, New York,

Massachusetts and Ohio, have now expressly extended complete or practically complete exemption to all charitable gifts, regardless of the place of use. Seven other states appear to make no distinction between foreign and domestic charities. Possibly charitable gifts should bear a small tax, but to penalize them with a maximum rate because they are not to be used exclusively in Colorado seems hardly consistent with modern spirit, and causes great resentment.

6. Widows' allowances and commissions. Prior to 1921 our statute permitted a widow to receive her $2,000 widow's allowance without impairment by inheritance taxes. Similarly, if she were the executor or administrator of her husband's estate the fees to which she would be entitled were deductible as expenses. In the 1921 revision the rates were radically increased, and there was inserted in Section 23 a phrase which extended the tax to the widow's (and orphan's) allowance and her executor's fees.

7. The *conclusive presumption* that gifts made within one year of death are in contemplation of death and taxable. For example: If a husband aged 25 gives his wife a home and is killed by accident the following day, the statute makes the gift taxable as a part of his estate upon the conclusive presumption that he contemplated death. In addition our statute contains a test of intention as follows:

> "The words 'contemplation of death' as used in this Act shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will" (Sec. 2c).

Consequently, if a young man makes a will and at or about the same time transfers his home to his wife, the gift is taxable, although he may have been in perfect health and thereafter lives fifty years, that is, if the statute means what it says. I believe no attempt has ever been made to enforce this latter provision. Prior to the Revenue act of 1926, the Federal policy has been to treat the question of contemplation of death as a matter of fact to be proven like any other circumstance, and such is the practice in most of the states, and the recommendation of the National Committee on Inheritance Taxation. The Supreme Court of the United States has recently held void a statute attempting to establish a six year conclusive presumption (Schlesinger vs. Wisconsin, 70 L. Ed. 301).

8. Absence of power to correct errors and make refunds. Our 1921 statute makes no provision for payments under protest or for the recovery of payments erroneously made. The Compiled Laws of 1921, however, show (Sec. 7513) a section of the act of 1907 providing for refunds, the usefulness of which is at least doubtful by reason of the fact that it seems to require a condition precedent to refund the signature of the County Treasurer who in 1907 was a receiving officer but is no longer so. I understand, however, that in small cases our Inheritance Tax Department has been making refunds under this old statute. A new provision is needed.

There are other sections in our statute which merit attention because unworkable or of doubtful value, but space will not permit of a complete analysis. For example: in section 3 appears the following:

> "and the tax * * * shall be immediately (at death) due and payable * * * except, however, in cases where the property is transferred by deed, grant, or gift made in contemplation of death, in which event the tax thereon shall be due and payable *at the time of such transfer.*"

This practically constitutes a gift tax,

the accrual of which will seldom, if ever, be conceded or determined until the subsequent death of the donor, perhaps decades later. So far as I know the clause has never been invoked, but it seems to contain germs of a first class law suit and ought to be eliminated.

Succession Tax or Estate Tax

We come finally to consider the form of the tax. There are two principal forms of death duties, viz, succession taxes and estate taxes. Most of the states, including Colorado, have used the former—perhaps because they began by levies limited to collateral relatives, for which purpose the succession tax is best fitted. Under it calculation of the tax is complicated, accurate forecasting of the tax burden on a given estate is impracticable, uniformity with the practice of other states or the Federal government unobtainable and adjustment to a given revenue requirement impossible.

The estate tax, which is a levy on the estate as a whole rather than upon the portions of the several heirs, legatees, or devisees, is best typified by the Federal practice, but it is also in use in Georgia and Mississippi, and to some extent in New York, Utah, Rhode Island, Virginia and Massachusetts. It is simple to calculate, the probable burden upon a given estate easy to estimate, it is adjustable to revenue demands, and readily capable of comparison with similar revenue measures of other jurisdictions. This is of particular importance for the moment by reason of the 80% credit now allowed under Federal statute, to meet which our succession tax cannot be adjusted, but as to which an estate tax could be brought into perfect alignment so that on large estates Colorado might receive precisely the amount of tax which would otherwise go to the Federal Government, and thereby receive substantial revenue without otherwise adding to the burdens of the estate.

The estate tax has the emphatic recommendation of the National Committee on Inheritance Taxation (originated under the sponsorship of President Coolidge, the governors of the several states, and the National Tax Association, for the purpose of eliminating the apparent evils in the existing death duties system), and the Chamber of Commerce of the United States. While the succession tax is specially adapted to placing a heavier burden upon remote relatives than upon immediate dependents, the estate tax can also be made to embody the same principles by adjustment of the exemptions. The estate tax like the succession tax is an excise duty—not a property tax—and inequality of exemptions would therefore, probably be constitutional.

New Statute Desirable

While the need for substantial changes in our existing system of inheritance taxation seems obvious, it should also be emphatically stated that the administrative machinery of our statute (as embodied in Sections 6 to 30) has given general satisfaction and is sound. Under it the system has been efficiently and economically administered by a succession of able and well qualified commissioners and deputies. This machinery is adaptable either to a revised succession tax or to an estate tax.

It is believed, however, that the desired comprehensive revision of the earlier sections, and the incidental adjustments of the administrative machinery, could be best accomplished by the passage of a complete act rather than by a series of amendments. If this be true, it is desirable that a new statute should be adopted, retaining in substance the present administrative section coupled with new tax-

ing section along the lines of either the succession tax or the estate tax, which new act should repeal the existing act with an appropriate saving clause as to pending cases.

If committees representing the City and State Bar Associations and the Chamber of Commerce should undertake to sponsor such revision, as seems worthy of serious consideration, they will find three sources from which to draw invaluable aid. First, Attorney General Boatright, Mr. Andrew Wood, the present inheritance tax commissioner, and his deputies. Second, The recently retired commissioner—for example, Mr. Hetherington, Mr. Ault and Mr. Blackman, several of whom have publicly expressed sympathy with the general recommendations here made. Third, A comprehensive report by the National Committee, and particularly the model laws, drafts of which are now being completed by that committee.

General Boatright is this month attending the annual meeting of the National Tax Association at Philadelphia. Mr. Wood was present at last year's meeting at New Orleans when the report of the National Committee on Inheritance Taxation was received. Mr. Hetherington took part in the important debates at St. Louis two years ago. Mr. Ault, in an address before the Law Club at the time of his retirement from office, called attention to the desirability of several of the changes above recommended. Senator Toll, Chairman of the Legislative Committee of the Colorado Bar Association, and Senator Fairfield of the Denver Bar Association were active in seeking similar legislation two years ago. We are fortunate, therefore, in having well informed public officials ready to cooperate actively in such program as may seem for the best interests of the state.

O

GEORGE A. CARLSON

GEORGE A. CARLSON, former Governor of Colorado and a member of this Association, passed away during the past month.

President James A. Marsh appointed a Committee composed of Cass E. Herrington, Benjamin Griffith and A. X. Erickson to extend the sympathy of this Association to the widow and to attend the funeral as representatives of this Association.

C. A. MURRAY

CHARLES A. MURRAY, a veteran member of The Denver Bar and long a member of this Association passed away during the past month.

President James A. Marsh appointed a Committee composed of John F. Rotruck, Robert Collier and Omar E. Garwood to attend the funeral as representatives of this Association.

The Rule of Reason

"Why should courts be less reasonable than reasonable men?"—Denison, J., in 78 Colo. 144.

We'll bite, Judge; why should they?

—Contributed

A Prophesy Come True

Albert Vogl sends the Record the following Biblical quotation which is cited as having a bearing upon a certain cause celebre:

"And though they hide themselves in the top of Carmel, I will search and take them out thence; and though they be hid from my sight in the bottom of the sea, thence will I command the serpent, and he shall bite them:"

—Amos 9, 3.

Revaluation of Property in Denver for Purpose of Assessment

By CLEM W. COLLINS
Assessor for the City and County of Denver

EVERY assessor frequently meets with the assertion of some taxpayer that his property is not assessed on the same basis as his neighbor. This will always be the case for exact equalization will never be possible. However there are degrees of equalization and no assessor should be completely satisfied with his accomplishments. The easiest way is for the assessor to carry forward his assessments from year to year and concern himself only with the complaints registered with him which he investigates and adjusts. However only a very small percentage of the total taxpayers make formal complaints even though they feel they are over-assessed and of course those who are under-assessed, will never complain, therefore the assessor who does not feel reasonably sure that all of his assessments are on the same basis of valuation is perpetrating and perpetuating an injustice against a large portion of the taxpayers within his jurisdiction.

Sales Studied

When the present administration of the City and County of Denver took charge of its affairs, they found that many complaints of inequality were being received and investigation showed that many of them were justified. In order to determine to what extent this condition existed, a record was started on January 1, 1924 in which was recorded every transfer of property in the city and the consideration noted. Beside this consideration was entered the assessed value of the property sold. From this the ratio of assessment to sales price was determined, not only for each sale but for each addition or sub-division in the city and for the city as a whole. The aggregate assessment for the entire city as compared with all the sales, showed that the city as a whole was very fairly assessed and the ratio of assessed value to sales value was approximately in accord with the ratio maintained throughout the counties of the state as determined by the State Tax Commission. The discrepancy in the assessment of individual parcels however was quite startling. In thousands of cases the assessments were found to be only a small part of the consideration received, while in thousands of other cases the sales had been for less than the assessed value.

Anyone reading the above may justly wonder how such a condition could have arisen. A study of the situation reveals the fact that these errors in valuation have accumulated in a perfectly natural manner throughout the years and can not be said to be the fault of any one in particular. Valuations or appraisals made by experts whose experience and training have been different, will vary greatly, so it is easy to understand how Deputy Assessors in the years gone by, have used different bases of valuation, resulting in the valuation of similar property at widely different amounts. Each man was left to his own judgment and in view of the fact that the turnover of Deputy Assessors is very great, very few indeed surviving a change of administration, their judgment could not be expected always to be the best. Especially is this true because of the fact that small salaries were paid and experienced appraisers seldom secured.

Changes in Construction Costs

Perhaps the chief cause of the marked discrepancy in valuations is due to changes in construction costs. A careful investigation has been made by the assessor's office in Denver during the last two years to determine how much has been the fluctuation in building costs over a long period of time. A research Department has been established from whose investigations the retail cost of every kind of building material has been determined from 1900 to 1925, also the scale of wages in the building trades for each of these years has been determined and from this a Chart has been compiled showing the trend of building costs. This chart, taking 1913 costs as 100%, shows that in Colorado the cost of construction of brick buildings (not including steel skeleton buildings) was 77% in 1900, 88% in 1905, 99% in 1910, 98% in 1915, 214% in 1920, and 198% in 1925. This shows that if a house was built for $10,000 in 1913, the same house could have been built in 1900 for $7,700, and a similar house built in 1920 would have cost $21,400 and if built in 1925 would have cost $19,800.

Colorado building statistics were found to differ considerably from the National index figures compiled by various authorities, this being due to the proximity to source of material and to the fact that labor costs were not affected by the radical fluctuations in the seaboard cities and industrial centers of the country. Buildings were entered on the assessment rolls at the assessor's estimate of the value at the time they were erected. When a jump of practically 220% in building costs in five years, from 1915 to 1920, is found, it is not difficult to understand how equalization is thrown out of gear.

Fluctuations in Land Values

In the case of land it is extremely difficult to keep pace with the fluctuating values in a large and rapidly growing city. Business centers are found to shift. The center of the retail business district, which is always the center of value, will frequently be found to shift several blocks within a few years, reducing the value of the former center and increasing the value of the present center. Similarly, exclusive residence sections become passe through the encroachment of apartment houses and business buildings and newly restricted sections are established, converting what was formerly low-priced, outlying land into land commanding fancy prices and depreciating the old section. This illustrates how land values get out of gear.

The variation was found to be so great in Denver that immediate action seemed imperative. Then came the problem of how best to proceed in order not only to get an equality of assessment but to have this assessment on the basis of actual value as required by law.

Visits to Other Cities

The Manager of Revenue visited several of the big cities throughout the country who have attempted, or are attempting, to remedy similar conditions in their respective cities and the best features in each plan were adopted and adapted to our local needs and additional plans were laid to take care of the problems peculiar to ourselves. Correspondence was had with other taxing authorities and a considerable amount of literature accumulated. In practically every state where similar attempts at revaluation have been made, the work was either done voluntarily by a large committee of Realtors and other interested and well-posted citizens or by professional appraisers who were engaged at a heavy cost to the city. Neither of these plans seemed feasible in Denver so steps were taken to create a corps of

experts within the Department who would be able not only properly to appraise the property now existing but to remain as a permanent technical staff to appraise buildings erected in the future and to keep the values of existing buildings adjusted and equalized. The selection of men capable of doing the work was the first consideration and this was not done hurriedly. The staff of appraisers has been gradually recruited during the last two years and are men who have had experience qualifying them for the work on hand. They have in practically every case, been dealers in real estate, contractors, engineers, appraisers for insurance companies or real estate appraisers of long experience.

Classifying Buildings

After having secured the men of satisfactory fundamental training, a school was organized under the auspices of the Board of Education and an engineer was placed in charge of the course and all of the field men or appraisers, and many of the office force attended. The school was organized in the Fall of 1924, sessions being held twice a week in the evening from 5:45 to 7:30. The public was invited to attend the lectures and many availed themselves of the opportunity. All technical features involved in the appraisal of property were studied. The assessors were taught how to estimate the cost of excavations, brick work, mill work, roofing, heating plants, etc. The various types of buildings were classified and through careful research and study of actual costs of specific buildings, prices per cubic foot for each class was determined. In the neighborhood of 100 classes of buildings were established and three rates determined for each class in accordance with the character of construction; good, medium or poor. If conditions at any time are encountered which render the prescribed rates inapplicable, the assessors are instructed to use their judgment in varying the prescribed rates, always noting on their field notes the reason for such variation. In making appraisals, complete field notes are obtained including a picture of the building, all of which is recorded on a permanent record showing the factors considered in arriving at the final valuation. In many cases the assessor from this record is able to tell the owner facts regarding his property which he himself did not know.

A definite, uniform system having been established and all of our men having been trained in the same school and all of the work being done within one year, the administration feels that its work will show the nearest approach to equalization possible. An extensive Manual for the guidance of Deputy Assessors has been compiled covering every phase of the work and illustrating the technical features such as the method of figuring the different elements of a building, discussion of methods of computing depreciation, how to determine obsolescence and utility depreciation, how to evaluate the influence of surrounding conditions, city zoning, etc., what the laws are governing assessments and discussion of the latest thought on the assessor's problems, among tax authorities of the country and many other matters helpful in the work.

Appraising Lands

The appraisal of the land presents another problem. In general, the principles involved in the Lindsey-Bernard, Sommers and other similar systems, will be used so far as practicable. The value of an inside lot having been determined through a study of sales, appraisals, etc., a percentage will be added for corner and other benefits. These percentages have been made as uni-

form as possible varying only where extraordinary conditions demonstrate the rule to be inapplicable. As values were tentatively determined in various sections of the city, an advisory committee of the Real Estate Exchange was called into conference to review these valuations and offer suggestions where they deem the values set, incorrect. Maps are being compiled to show the assessment of land throughout the entire city and the public is invited and urged to study these maps in order that they may see not only at what value their own property is stated on the Assessor's books, but their neighbor's as well. With the exception of a few local adjustments, this work of reappraising all the land and buildings in Denver has been completed and the new valuations placed on the assessment rolls as of April 1, 1926. The field men averaged ten appraisals per man per day. The average salary of the field force being about $6.00 per day, the cost per appraisal is about sixty cents. This does not include the office expense incidental to copying on the permanent records, checking, photographing, etc. There were about 65,000 buildings appraised.

If this work had to be repeated every year or every few years, the cost would be exorbitant. Under the present plan this will not be necessary. In appraising a building the probable life is estimated as accurately as possible taking into account probable obsolescence and utility depreciation as well as wear and tear. Very few buildings in a growing city of the age of Denver, will remain in use until physically exhausted. They are torn down to make way for more modern structures. This makes obsolescence an important and almost universal factor in determining valuation. After having determined the probable life, an annual rate of depreciation is arrived at and noted on the permanent record. Annually hereafter the estimated depreciation will be deducted from the assessed value of the preceding year. If conditions arise which vary the original schedule of depreciation, corresponding changes will be made in the future calculations.

Land cannot be reappraised annually in this manner. Changes in value are more intangible and indefinite. It is estimated that a complete reappraisal of land every five years will keep the values sufficiently uniform, and this work can be done by the regular field force without additional help.

Cooperation from Real Estate Exchange

In addition to the Committee from the Real Estate Exchange mentioned above, other committees have been appointed who have cooperated in a splendid way with the Assessor's office. Committees appointed by the Denver Chapter of the American Institute of Architects and the Master Builders Association, have been consulted frequently as well as other members of these professions in arriving at cost per cubic foot and in gathering other data for the Assessor's Manual. There is little new under the sun and but little in our plan and system is original. It is rather an accumulation of the best ideas of experts over the country, no small part of which has been contributed by our own citizens.

Total Aggregate Assessment Unchanged

The revaluation did not result in a change in the total aggregate assessed value of the city, our purpose being merely to equalize assessments. The increase in the 1926 Abstract over that of 1925 was due entirely to the erection of new buildings during the year. The question is frequently asked as to the effect of the reappraisal on taxes. From the facts as stated above, it will

readily be seen that it cannot have any effect either on taxes or the levy.

Another important consideration has been the keeping of a proper equalization in the ratio of assessment among Denver and the other counties. This has been accomplished through the cooperation of the State Tax Commission, who each year make extensive comparisons of assessed values with transfers from which is determined an average for the state. It is our duty to the state as a whole to assess on as high a basis as the other counties. It is likewise our duty to the citizens of our own county not to assess on a higher basis than do the other counties. It has been our purpose to see that an equitable balance is maintained so that justice will be done all around.

The Bar Primary

ON December 2, 1926, the Joint Primary Committee composed of the members of the Judiciary and Judicial Selection Committees of this Association adopted the following rules for the holding of a Bar Primary:

"In accordance with a resolution of The Denver Bar Association, the Judiciary Committee and Judicial Selection Committee have adopted the following rules for the holding of Bar Primaries to make recommendations to the Governor for the successor to Judge Charles C. Butler on the District Bench:

1. All practicing lawyers in Denver, as well as members of The Denver Bar Association, will be entitled to vote at the primaries to be held.

2. Two primaries shall be held.

3. Any practicing Denver lawyer may be a candidate, and his name may be submitted by letter either by himself, or by any other lawyer. No acceptance is required for the first primary.

4. ALL NOMINATIONS MUST BE IN THE HANDS OF THE SECRETARY OF THE ASSOCIATION ON OR BEFORE 12 O'CLOCK NOON ON WEDNESDAY THE 8TH DAY OF DECEMBER, 1926.

5. In making nominations the party affiliation of the candidate shall be stated.

6. A printed list of all candidates proposed will be furnished the voters before the first primary, there being a separate list for each party group.

7. At the first primary, each lawyer may vote for not more than 3 Democrats and 3 Republicans.

8. After the first primary is held the 6 highest candidates in each party group accepting the nomination shall be candidates in the second primary.

9. The 3 Democratic candidates receiving the highest vote, and the 3 Republican candidates receiving the highest vote at the second primary, shall be the persons to be recommended to the Governor.

10. All voting will be by mail and all ballots must be signed. To avoid duplications no unsigned ballots will be counted. All ballots will be treated as confidential, and will be opened only in the presence of the joint committee. Dates for voting will be announced later."

A copy of these rules was sent to every member of The Denver Bar Association and every practicing lawyer in Denver, as near as possible. The first ballot, designated Bar Primary Ballot No. 1, was mailed December 9, 1926, and contained the names of eleven Democratic and thirteen Republican candidates, together with the following instructions:

"BAR PRIMARY BALLOT NO. 1.

Instructions:

Every member of The Denver Bar Association and every lawyer practicing in Denver may vote for not more than three of the Democratic and for not more than three of the Republican candidates listed below and may vote for less than three if he desires.

PLEASE MARK YOUR BALLOT—PLACE IT IN THE ENCLOSED STAMPED ADDRESSED ENVELOPE AND SEAL THE SAME—SIGN YOUR NAME ACROSS THE LEFT CORNER OF THE ENVELOPE ON THE LINE PROVIDED FOR THAT PURPOSE—THEN MAIL IT.

Ballots must be returned to the Secretary by 12 o'clock noon on Tuesday, December 14, 1926. Ballots received in envelopes not signed as above will not be counted. Voters names will first be checked,—the ballots filed and the envelopes destroyed to preserve secrecy."

On Tuesday, promptly at two P. M., the entire joint committee met and first checked the names appearing on the envelopes with printed lists of lawyers. Thereupon, the envelopes were opened at random and the ballots removed and the envelopes destroyed. In this way, the element of secrecy was preserved.

On December 16, 1926, Bar Primary Ballot No. 2 was mailed and was as follows:

"BAR PRIMARY BALLOT NO. 2.

Instructions:

The names of the six high candidates at the first primary in each party group who have accepted the nomination of this Association appear below on this ballot.

The three Democratic candidates receiving the highest vote and the three Republican candidates receiving the highest vote at this—THE SECOND PRIMARY—shall be the persons to be recommended to the Governor.

Every member of The Denver Bar Association and every lawyer practicing in Denver may vote for not more than three of the Democratic and for not more than three of the Republican candidates listed below and may vote for less than three if he desires.

PLEASE MARK YOUR BALLOT—PLACE IT IN THE ENCLOSED STAMPED, ADDRESSED ENVELOPE AND SEAL THE SAME—SIGN YOUR NAME ACROSS THE LEFT CORNER OF THE ENVELOPE ON THE LINE PROVIDED FOR THAT PURPOSE—THEN MAIL IT.

Ballots must be returned to the Secretary by 12 o'clock noon on Wednesday, December 22, 1926. Ballots received in envelopes not signed as above will not be counted. Voters names will first be checked,—the ballots filed and the envelopes destroyed to preserve secrecy.

DEMOCRATS

SANBORN, F. W. SR.
STEELE, ROBERT W.
RIDDELL, HARVEY
BABB, HENRY B.
MOWRY, W. F.
COOK, W. FELDER

REPUBLICANS

McDONOUGH, FRANK, SR.
WHITE, WALTER E.
HAINES, CHARLES H.
BLAKENEY, CHARLES J.
ORAHOOD, A. T.
SAMPSON, JOSEPH C."

Some of the candidates who were among the six highest in each group at the first primary did not file acceptance to qualify for the second primary and therefore their names were not in the second groups which were voted upon in the second primary.

The three Democratic candidates and

the three Republican candidates receiving the highest vote at the second primary are named below in *alphabetical* order:

DEMOCRATS

RIDDELL, HARVEY
SANBORN, F. W. SR.
STEELE, ROBERT W.

REPUBLICANS

HAINES, CHARLES H.
McDONOUGH, FRANK, SR.
WHITE, WALTER E.

These are the six attorneys who will be recommended to the Governor for appointment to the position in question.

General Observations: For the first time in the history of the Bar Association primary activities, a really representative vote of the Association was obtained, over SIX HUNDRED ballots having been cast at the first primary and over SIX HUNDRED ballots having been cast at the second primary. Heretofore, the votes cast at the bar primary have been placed in a ballot box at the Courthouse, and the result has been that a representative vote of the Bar has never before been obtained. Widespread approval of the present method of holding a primary has been expressed by attorneys, and it is believed that the value of the bar primary as a true indication of the sentiment of the Bar has been greatly increased, due to the fact that approximately four-fifths of those eligible to vote have voted at these two primaries.

Baron Surrebutter—"A hard case. But hard cases make bad law."

Shade of Crogate—"I think bad law makes hard cases."

(Conversation between Baron Surrebutter and Edward Crogate, in Crogate's Case—Holdsworthy's History of English Law, vol. 9, p. 423.)

Bars

(*Tune of "Smiles"*)

There are bars that make us thirsty,
There are bars that make us glad,
There are bars that thrill us all to first see,
There are iron bars that make us sad,
There are bars that serve but for obstruction,
There are bars of gold and bars of sand,
But the bar that saves us from destruction
Is the law that we understand.

—*J. C. S.*

Fee Simple

A prominent member of the local Bar recently received the following letter which, in the light of the current discussion of the minimum-fee question, seems particularly appropriate:

Dear Sir:

Enclosed please find check to pay for certified copy of Mrs. ———'s divorce decree.

Your fee paid some months ago was considerably more than that paid the minister some fifteen years ago, but not out of proportion when you consider the service rendered.

Noah Floated Company

A city business man was very keen on having proficient clerks in his employ. Before a clerk could enter his office he was required to pass a written examination on his knowledge of business.

At one examination one of the questions was: "Who formed the first company?"

A certain bright youth was a little puzzled at this, but was not to be floored. He wrote:

"Noah successfully floated a company while the rest of the world was in liquidation."

Applicants

The following applicants have been recommended by the Membership Committee and will be voted on at the next regular meeting:

GRAHAM SUSMAN:

Born in Leeds, England; came to Colorado in 1909; has degree of LL. B. from the University of Denver, 1926; admitted to practice in Colorado in 1926; recommended by Wayne C. Williams and George E. Tralles.

FRED S. CALDWELL:

Born in Michigan; came to Colorado in 1916; has degree of Ph.B. from Colorado College; admitted to practice in Colorado in 1916; recommended by Wayne C. Williams and S. Harrison White.

E. R. LEONARD:

Born in St. Paul, Minnesota; has degree of LL.B. from St. Paul College of Law; admitted to practice in Colorado in 1926; recommended by Robert F. Armstrong and Hamlet J. Barry.

JAMES T. BURKE:

Born in Amery, Wisconsin; came to Colorado in 1922; has degree of LL.B. from Westminster Law School; admitted to practice in Colorado in 1926; recommended by E. B. Evans and Allen Moore.

DEWITT C. WEBBER:

Born in Hastings, Minnesota; came to Colorado in 1877; admitted to practice in Colorado in 1887; recommended by John Campbell and Greeley W. Whitford.

ROYAL ROBERT IRWIN:

Born in Pittsburg, Kansas; came to Colorado in 1923; has degree of LL.B. from University of Denver in 1926; admitted to practice in 1926; now associated with Rogers, Johnson and Ellis; recommended by Erl H. Ellis and Lewis B. Johnson.

ROLAND F. MARONEY:

Born in Colorado; has degree of LL.B. from University of Colorado in 1925; admitted to practice in Colorado in 1926; now associated with Rogers, Johnson and Ellis; recommended by Erl H. Ellis and Lewis B. Johnson.

HAROLD B. WAGNER:

Born in Colorado; has degree of E. B. from Harvard and LL.B. from University of Denver; admitted to practice in Colorado in 1926; associated with Davis and Wallbank; recommended by Stanley T. Wallbank and Harry C. Davis.

J. CHURCHILL OWEN:

Born in Colorado; has degree of A.B. from Yale and LL.B. from Harvard; admitted to practice in Colorado in 1926; associated with Dines, Dines & Holme; recommended by Robert E. More and Harold B. Roberts.

An old lady walked into the Judge's office.

"Are you the judge of Reprobates?" she inquired.

"I am the judge of Probate," replied his honor, with a smile.

"Well, that's it, I expect," answered the old lady. "You see," she went on confidentially, "my husband died detested and left several little infidels, and I want to be their executioner."

—*Exchange*

Recent Trial Court Decisions

(*Editor's Note.*—It is intended in each issue of the Record to note interesting current decisions of all local Trial Courts, including the United States District Court, State District Courts, the County Court, and the Justice Courts. **The co-operation of the members of the Bar is solicited in making this department a success. Any attorney having knowledge of such a decision** is requested to phone or mail the title of the case to Victor Arthur Miller, who will digest the decision for this department. The names of the Courts having no material for the current month will be omitted, due to lack of space.)

Denver District Court

DIVISION II JUDGE DUNKLEE

Prohibition—Parties—Public Utilities Commission

Facts: Application to intervene and subsequent general demurrer by intervenors. Defendant the Commission having made a rate ruling adversed to intervenors who, after one rehearing by Commission, were denied writ of error in the Supreme Court, the Commission prepares to entertain a second rehearing. Relator, who prevailed on the previous rate hearing, seeks to prohibit without making the other parties to the rate hearing defendants in the prohibition case. The latter accordingly seek to intervene and attack the complaint as insufficient in law to justify prohibition.

Held: Intervention allowed: Demurrer sustained.

Reasoning: Adverse parties to proceedings sought to be prohibited while not necessary parties, the tribunal being the only necessary party, are nevertheless proper parties and have such interest in the subject matter as to warrant their intervention.

The granting or denying of a second rehearing is procedural and not jurisdictional so that prohibition will not lie to prevent it.

People ex rel Pikes Peak Fuel Co., vs. Public Utilities Commission et al, 95627.

Mechanics' Liens—Municipal Corporations—Pleading

Facts: General demurrer. Denver licensed the erection of a grandstand on real estate owned by the City. A mechanics' lien is sought to be foreclosed against the grandstand only. The complaint alleging in addition to the above facts in general terms that the City claims an interest in the said grandstand but that such interest is junior to the claim.

Held: Demurrer overruled.

Reasoning: General allegation of inferiority of interest is sufficient to put City to proof or disclaimer. Rule of exemption of municipal property utilized for public purpose recognized but general allegation of interest insufficient to plead such ownership nor does allegation of ownership of land warrant such presumption.

Denver Lumber Company vs. Whitney et al, 92512

Justice of the Peace Court

JUSTICE A. T. ORAHOOD

Chattel Mortgage—Priority—Liens—Notice

Facts: One Wilson et ux execute an original and a renewal chattel mort-

gage to plaintiff without releasing original of record, covenanting in both against liens misdescribing address in the second. Defendant is a subsequent warehouse lienor without actual knowledge of the mortgage. Some evidence that plaintiff was notified of storage. Admitted that plaintiff had made no effort to take possession immediately on default. Replevin.

Held: For plaintiff.

Reasoning: Both liens are valid, plaintiff's being prior in time is prior in right. Failure to take possession upon default is not ipso facto negligence. The renewal mortgage did not invalidate the original as against third party. Mere notice would not subject plaintiff to a subsequent lien in the absence of its assent thereto.

Second Industrial Bank vs. Duffy

Motor Vehicles—Execution—Notice

Facts: Replevin of an automobile upon which levy of execution had been had by defendant upon judgment against one Dunning. Plaintiff had allowed Dunning to use the car at times and had retained his license plates subsequent to the due transfer to it by statutory certificate prior to judgment or execution.

Held: For defendant.

Reasoning: Under provisions of Section 5113, C. L. 1921, there was not such an open, notorious and exclusive possession in the plaintiff as to indicate that the ownership of the car has changed. And particularly the fact that the license plates issued to Dunning were permitted to remain on the car was sufficient to establish fraud in law if not in fact. The certificate of title law (Chap. 136, S. L. 1925) not so providing, the records of the Secretary of State or of his agent, the County Clerk and Recorder, are not constructive notice of the transfer and the defendants were not bound thereby.

National Industrial Corporation vs. Soetje et al. No. 53-302

Negotiable instruments—parol evidence—misrepresentation of Law

Facts: Defendant was an indorser of certain promissory notes and the same having been dishonored suit was brought against him. On the trial the defendant sought to show an oral contemporaneous agreement that the indorsee was to take the notes, as to him, without recourse, and that an agent of the indorsee prevailed upon him to omit the words "without recourse" by representing that the use of such words would invalidate the notes.

Held: For the plaintiff.

Reasoning: The contemporaneous agreement if any, was oral, and testimony of it is properly excluded under the parol evidence rule. The representations as to omitting the words "without recourse" were, if made, representations of law and, therefore, not actionable fraud.

The Second Industrial Bank vs. Woodman. No. 52-533

So Both Throw the Plus Away

Red Tie—"The owners want to throw all the onus on the miners."

Blue Tie—"And the miners want to throw all the minus on the owners."

—*Punch*

Cheering Them Up

Friends of Mr. and Mrs. —— —— will be relieved to learn that she and Mr. ——— who live at Miami, Florida, were injured in the recent hurricane.

—*Denver paper.*

Layman Ruggles

Lately the Honorable William Howard Taft, Chief Justice of the U. S. Supreme Court, was moved to write a letter to a man unlettered in the law. In closing this letter, which was made public last week, Judge Taft said, "You could do no more important work for the body social and politic than this. As one in the community I write to thank you."

The gentleman addressed was Charles F. Ruggles, timber and salt man of Manistee, Mich. The reason he was addressed—and Lawyer Elihu Root of Manhattan wrote a letter similar to Judge Taft's—was that both writers had read a declaration of the officers and directors of the American Judicature Society in which it was revealed that Mr. Ruggles was that society's conceiver, founder and patron.

In 1912, Mr. Ruggles employed an editor in his town to make a survey of the country's courts. Scanning this survey, Mr. Ruggles noticed that Chief Justice Harry Olson of the Chicago Municipal Court was a man who kept tab on the work done and undone in Chicago courts, and who had made a practice of assigning judges to the places in which they were most needed at given times. Judge Olson's records and audits showed that the law's delays were thus greatly reduced in Chicago. It was simply a matter of an executive's being responsible for the direction of a judicial force to eliminate idleness here and overwork there.

Mr. Ruggles put off for Chicago and asked Judge Olson to be chairman of a national society to promote this kind of executive direction in other courts. Judge Olson accepted and the American Judicature Society has since—as Lawyer Root said in his letter—served as a model for a vast amount of research. But only last week was it realized in high places that a public spirited layman was responsible. Only last week did Judge Olson declare: "No individual has contributed more toward court reform in the last 50 years than Mr. Ruggles."

—*Reprinted from "Time".*

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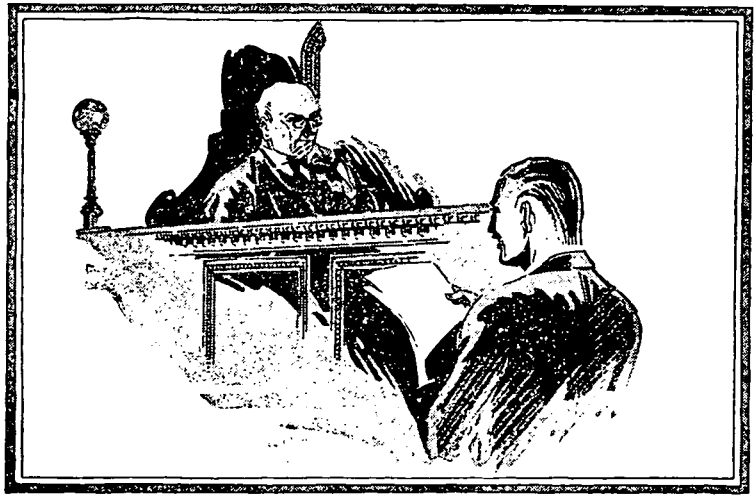

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for
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